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Notice of Allowability

Application No.

10/630,336

Examiner

Charles A. Marmor, II

Applicant(s)

EGGERS, PHILIP E.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the telephonic interview of 17 March 2005.
2. ☒ The allowed claim(s) is/are 1-26.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 03172005.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 01202004
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 03172005.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.



Charles A. Marmor, II
Primary Examiner
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DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-17, in the reply filed on January 4, 2005 is acknowledged. The traversal is on the grounds that the claims of Group I and the claims of Group II are each related to the other in operation and effect. This is found persuasive. The restriction requirement has been withdrawn.

EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Gerald L. Smith on March 17, 2005.

3. The application has been amended as follows:

IN THE SPECIFICATION:

- a. At page 15, line 31, "244a" (first occurrence) has been changed to --244--.
- b. At page 16, line 15, "(attorney docket NET 2-099)" has been changed to
--10/630,488--.
- c. At page 17, line 2, "(attorney docket NET 2-099)" has been changed to
--10/630,488--.

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- d. At page 20, line 7, -- the cable receiving aperture 246d of -- has been inserted following “through”.
- e. At page 20, line 20, “244a-244d” has been changed to --244a-244e--.
- f. At page 22, line 28, “364” has been changed to --362--.
- g. At page 22, line 31, “364” has been changed to --362--.
- h. At page 22, line 33, “364” has been changed to --362--.
- i. At page 22, line 35, “364” has been changed to --362--.

IN THE CLAIMS:

- a. In claim 1, line 20, --one or more-- has been inserted before “tensionable”.
- b. In claim 2, line 2, --one or more-- has been inserted before “tensionable”.
- c. In claim 5, line 4, “spring exhibits” has been changed to
--one or more springs exhibit--.
- d. Claim 6 has been amended as follows:

6. (Currently Amended) The apparatus of claim 5 in which:
 said ~~spring is a~~ one or more springs are compression springs having a length of about 0.25 inch.
- e. In claim 7, line 4, “spring exhibits” has been changed to
--one or more springs exhibit--.
- f. Claim 8 has been amended as follows:

8. (Currently Amended) The apparatus of claim 7 in which:
 said ~~spring is a~~ one or more springs are compression springs having a length of about 0.25 inch.

- g. In claim 9, line 5, "a" has been deleted.
- h. In claim 10, line 2, "spring exhibits" has been changed to
--one or more springs exhibit--.
- i. In claim 11, line 2, "spring exhibits" has been changed to
--one or more springs exhibit--.
- j. In claim 18, line 25, "terminator component" has been changed to --cable terminator--.
- k. In claim 21, line 2, --at least one-- has been inserted before "spring".
- l. In claim 22, line 3, --at least one-- has been inserted before "spring".
- m. In claim 23, line 2, --at least one-- has been inserted before "spring".
- n. In claim 24, line 3, --at least one-- has been inserted before "spring".
- o. In claim 25, line 2, --at least one-- has been inserted before "spring".

4. The following changes to the drawings have been approved by the examiner and agreed upon by applicant: In Figure 10, reference character "520" will be deleted and In Figure 18, reference character "462" will be deleted from the drawings or an amendment will be made to page 27 of the specification such that said reference character will be mentioned in the specification. In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

5. The following is an examiner's statement of reasons for allowance:

Regarding claims 1-11, no prior art of record teach or fairly suggest an apparatus for retrieving a tissue volume, as claimed by Applicant, where the apparatus includes a control

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assembly and a capture component positioned at a forward region of a delivery member having an interior channel, the capture component having a forward portion extending to a forwardly disposed tip region and pursing cable assembly energizable to define an electrosurgical cutting leading portion, where the forward portion is drivably extendable from an initial position forwardly at an initial angle of attack toward an intermediate position where the electrosurgical cutting leading portion defines a cutting profile of maximum effective diametric extent, and where the forward portion is further extendable while being drawn in contraction toward the axis at tip region inwardly directed full pursing angles of attack by pursing stress at the cable assembly to a capture position; and where the control assembly includes a drive portion in driving engagement with the capture component that causes the electrosurgical energization of the pursing cable assembly and effects a loading of tensionable cables of the cable assembly to derive a pursing stress which progressively increases toward a higher value to establish corresponding tip region transition pursing angles of attack which commence prior to attainment of the intermediate position and prior to commencement of the tip region full pursing angles of attack.

Regarding claims 12-17, no prior art of record teach or fairly suggest a method for isolating and retrieving a tissue volume, where the method includes steps of electrosurgically exciting capture component cables to form a cutting arc at a electrosurgical cutting edge; driving the capture component from an initial position to effect deployment of cable supports at an initial angle of attack and to expansively move the electrosurgical cutting edge toward an intermediate position corresponding with a cutting profile defining a maximum effective diametric extent; loading the cables with a pursing stress which progressively increases to progressively alter the

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angle of attack of the cable support tip portions defining a curvature toward a longitudinal axis as the intermediate position is approached to an extent facilitating the forward movement of the cable supports; and loading the cables with a pursing value of tensile stress effective to converge the tip portion to a capture position defining a tissue recovery cage substantially encapsulating a tissue volume.

Regarding claims 18-26, no prior art of record teach or fairly suggest a system for retrieving a tissue volume, as claimed by Applicant, where the apparatus includes a support assembly configured to support a cable terminator for slideable forward movement under drive from cables of a pursing cable assembly of a capture component; a drive assembly having a drive member drivably engaged with the capture component and extending to a driven portion and a motor driver assembly energizable to impart drive movement to the driven portion to effect application of drive to the capture component and exhibiting a stall condition upon attainment by the capture component of a capture orientation; a cable stop located to effect blockage of slideable forward movement of the cable terminator at a position corresponding substantially with a capture component intermediate orientation; and a pre-tensioning assembly configured to assert a modulated pretension upon the cables at the cable terminator prior to blockage thereof effective to provide a progressive alteration of an initial attack angle toward the longitudinal axis to inhibit a premature derivation of the stall condition.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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March 17, 2005